IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
June 18, 2002 Session

CLESSIE T. JACO, JR. v. STATE OF TENNESSEE

Direct Appeal from the Circuit Court for Maury County
No. 9854 Robert L. Jones, Judge

No. M2001-02150-CCA-R3-PC - Filed August 14, 2002

The Appellant, Clessie T. Jaco, Jr., appeals the Maury County Circuit Court's dismissal of his petition for post-conviction relief. In 1997, Jaco pled guilty to two counts of attempted rape. Following a sentencing hearing, Jaco, a Range I Standard Offender, received two consecutive six-year sentences to be served in the Department of Correction. On appeal, Jaco argues that his guilty plea was involuntary because he was not informed that prior to release on parole he would be required to undergo a mental health evaluation pursuant to Tennessee Code Annotated § 40-35-503(c) (1997). After a review of the record, we find no error. Accordingly, the judgment of the post-conviction court dismissing the petition is affirmed.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed.

DAVID G. HAYES, J., delivered the opinion of the court, in which ALAN E. GLENN and ROBERT W. WEDEMEYER, JJ., joined.

John S. Colley, III, Columbia, Tennessee, for the Appellant, Clessie T. Jaco, Jr.

Paul G. Summers, Attorney General and Reporter; Michael Moore, Solicitor General; Kim R. Helper, Assistant Attorney General; T. Michael Bottoms, District Attorney General; Larry Nickell, Jr., Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

Factual Background

On November 10, 1997, pursuant to a negotiated plea agreement, the Appellant pled guilty to two counts of attempted rape, a class C felony. Thereafter, he received two six-year sentences to be served consecutively in the Department of Correction. The Appellant's sentences were affirmed on direct appeal. *See State v. Jaco,* No. 01C01-9802-CC-00091 (Tenn. Crim. App. at Nashville, Dec. 21,1998), *perm. to appeal denied,* (Tenn. 1999).

The Appellant filed the instant petition for post-conviction relief on May 15, 2000, contending that his guilty plea was not knowingly, intelligently, and voluntarily made because he was not advised that prior to his release on parole he would have to be evaluated and certified by a mental health professional pursuant to Tennessee Code Annotated § 40-35-503(c) (1997).[1] Following an evidentiary hearing, the post-conviction court denied the Appellant post-conviction relief, finding that:

> . . . [T]he petitioner knowingly, freely, and voluntarily waived his rights to trial by jury and entered pleas of guilty to two counts of attempted rape with an agreed six-year sentence on each to run consecutively. . . .
>
> The court further finds that the defendant, his wife, and his uncle all understood that he would be eligible for parole consideration and possible release after serving 30% of his sentence. Even though the attorney representing the petitioner at the time of his pleas believes that he advised the petitioner about the provisions of *Tennessee Code Annotated* § 40-35-503(c), the court finds that the petitioner and members of his family were probably not advised about that statutory provision and certainly did not understand the consequences of that provision. The court further finds, based on the exhibits and testimony in this proceeding, that the Board of Probation and Parole has not released any sex offender after serving only 30% of his sentence unless an appropriate professional has rendered an opinion essentially saying that it is physically impossible for the inmate to commit a future sexual offense.
>
> The court further finds that the court itself at the time of the sentencing hearing failed to consider T.C.A. § 40-35-503(c) and erroneously commented that the defendant should be eligible for release after serving 30% or less of his sentence. . . . [N]either the petitioner's then attorney nor the Assistant District Attorney General corrected the court by calling to the court's attention the provisions of T.C.A. § 40-35-503(c). That erroneous conclusion by the trial court did not affect the validity of the petitioner's earlier wavier of trial by jury and plea of guilty.
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> The failure to advise the petitioner that he would not likely be released after serving 30% of his sentence because of the provisions of T.C.A. § 40-35-503(c) does not . . . invalidate the waiver of trial by jury, plea of guilty, and convictions thereon.

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[1] "No person convicted of a sex crime shall be released on parole unless a psychiatrist or licensed psychologist designated as a health service provider has examined and evaluated such inmate and certified that, to a reasonable medical certainty, the inmate does not pose the likelihood of committing sexual assaults upon release from confinement. The examination and evaluation shall be provided by psychiatrists or licensed psychologists designated as health service providers whose services are contracted or funded by the department of correction or the board of paroles. The board shall consider any such other evaluation by a psychiatrist or licensed psychologist designated as a health service provider which may be provided by the defendant." Tenn. Code Ann. § 40-35-503(c).

This timely appeal followed.

ANALYSIS

Post-conviction relief may be granted only if a conviction or sentence is void or voidable because of a violation of a constitutional right. Tenn. Code Ann. § 40-30-203 (1997). The Due Process Clause of the United States Constitution requires that guilty pleas be knowing and voluntary. *State v. Wilson*, 31 S.W.3d 189, 194 (Tenn. 2001); *see Boykin v. Alabama*, 395 U.S. 238, 243, 89 S. Ct. 1709, 1712 (1969). In evaluating the knowing and voluntary nature of a guilty plea, the United States Supreme Court has held, "[t]he standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S. Ct. 160, 164 (1970). The constitutional mandate that guilty pleas be knowing is essentially fulfilled by the court informing the accused of his or her constitutional rights against self-incrimination, to confront witnesses, and to trial by jury. *Boykin*, 395 U.S. at 243, 89 S. Ct. at 1712. Any other requirement in excess of *Boykin* is not based upon any constitutional provision, federal or state. *State v. Prince*, 781 S.W.2d 846, 853 (Tenn. 1989).

The post-conviction court determined that the Appellant proved by clear and convincing evidence that he received erroneous advice from trial counsel regarding parole eligibility. Also, the sentencing court erroneously advised the Appellant regarding parole eligibility. However, "a guilty plea is not rendered constitutionally infirm because a criminal defendant is not informed about the details of his parole eligibility, including the possibility of being ineligible for parole." *Alan Dale Bailey v. State*, No. M2001-01018-CCA-R3-PC (Tenn. Crim. App. at Nashville, Feb. 8, 2002), *perm. to appeal voluntarily dismissed*, (Tenn. 2002) (quoting *Rickey Sams v. State*, No. 03C01-9511-CC-00368 (Tenn. Crim. App. at Knoxville, Nov. 14, 1996)). As of to date, the United States Supreme Court has "never held that the United States Constitution requires the State to furnish a defendant with information about parole eligibility in order for the defendant's plea of guilty to be voluntary." *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). Thus, in the present case, the Appellant's claim that he should have been informed of the mental health evaluation required by Tennessee Code Annotated § 40-35-503(c) is not a constitutionally-based claim. *See id.* As noted above, post-conviction relief is only available to address the violation of a constitutional right. Therefore, the Appellant's claim is not cognizable in this proceeding. *Id.*

Moreover, we find nothing in the record to suggest that the Appellant's guilty plea was conditioned upon the fact that he would be parole eligible after service of thirty percent of his sentence. *See Santobello v. New York*, 404 U.S. 257, 264, 92 S. Ct. 495, 499 (1971) (holding that a plea must rest to a significant degree on the promise or agreement of the prosecutor). The gratuitous advice of the trial court and the erroneous advice of counsel with regard to parole eligibility was a collateral rather than a direct consequence of the guilty plea and, thus, did not impact the voluntariness of the plea. Therefore, the issue is without merit.

CONCLUSION

Based upon the foregoing, we find that the post-conviction court did not err in ruling that the Appellant's plea was knowingly, intelligently, and voluntarily made. Accordingly, the judgment of the Maury County Circuit Court is affirmed.

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DAVID G. HAYES, JUDGE